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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,339	03/12/2002	Peter Jungblut	028622-0108	1997
7590	11/29/2006			EXAMINER SWARTZ, RODNEY P
Stephen A Bent Foley & Lardner Suite 500 3000 K Street NW Washington, DC 20007-5109			ART UNIT 1645	PAPER NUMBER
DATE MAILED: 11/29/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/890,339	JUNGBLUT ET AL.
	<b>Examiner</b> Rodney P. Swartz, Ph.D.	<b>Art Unit</b> 1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 07 September 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 44,45,48-57 and 63-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 44,45,48-57 and 63-68 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Applicants' Response to Office Action, received 7 September 2006, is acknowledged.

Claims 44, 55, 56, 57, 63, and 66 have been amended.

2. Claims 44, 45, 48-57, and 63-68 are pending and under consideration.

### **Rejections Withdrawn**

3. The rejection of claims 44, 45, 48-50, and 63-68 under 35 U.S.C. 101 is withdrawn in light of the amendment of the claims.

4. The rejection of claims 55 and 57 under 35 U.S.C. 112, second paragraph, as being indefinite for reducing some diseases, is withdrawn in light of the amendment of the claims.

5. The rejection of claims 56 and 57 under 35 U.S.C. 112, second paragraph, as being indefinite for other fragments, is withdrawn in light of the amendments of the claims to delete other fragments.

6. The rejection of claims 51-54 under 35 U.S.C. 112, second paragraph, as being indefinite for dependence from rejected claims, is withdrawn.

### **Claim Rejections - 35 USC § 112**

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Newly amended claims 56 and 57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 56 as newly amended now reads on a method which ends with "detecting the presence of polynucleotides encoding said *M. tuberculosis* in said sample". It is unclear how the DNA encodes for the entire *M. tuberculosis*.

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Claim 57 depends from claim 56, but does not clarify the issue.

3. Claims 44, 45, 48-57, and 63-68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are drawn to isolated nucleic acids or compositions comprising nucleic acids wherein said nucleic acids encode for proteins Rv0068, Rv3407, or a fusion of said proteins and methods of making and methods of use.

It is unclear exactly what are the metes and bounds of said nucleic acid molecules because the identity of said molecules depends on the identity of the proteins encoded by said nucleic acid molecules. The identity of said proteins is merely claimed by an arbitrary nomenclature without any physical characteristics or sequence information. Therefore, because the sequences of the proteins are not disclosed in the instant specification, the sequences, and thus the metes and bounds, of any nucleic acid molecules which may encode said proteins are indefinite.

### **Conclusion**

4. No claims are allowed.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's Supervisor, Jeffrey Siew, can be reached on (571)272-0787.

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The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
RODNEY P SWARTZ, PH.D  
PRIMARY EXAMINER  
Art Unit 1645

November 27, 2006